

Message Text

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PAGE 01 GENEVA 03379 041941Z
ACTION L-03

INFO OCT-01 IO-13 ISO-00 DHA-02 DODE-00 ACDA-07 SSO-00
NSCE-00 SS-15 NSC-05 SP-02 OIC-02 USIE-00 INRE-00
CIAE-00 INR-07 NSAE-00 /057 W
-----041946Z 001090 /46
O 041906Z MAY 77
FM USMISSION GENEVA
TO SECSTATE WASHDC IMMEDIATE 7058

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FROM ALDRICH

E.O. 11652: N/A
TAGS: ICRC, PFOR, PARM
SUBJ: RESPONSE TO FREYMOND LETTER AS IT RELATES TO THE
CONFERENCE ON INTERNATIONAL HUMANITARIAN LAW.

REF: STATE 100055

1. DRAFT RESPONSE CONVEYED REFTEL APPEARS BASED ON A MISUNDERSTANDING OF FREYMOND'S POINT, PRESUMABLY RESULTING FROM FREYMOND'S IMPRECISION OR TYPOGRAPHICAL ERRORS. FREYMOND, WHO IS AN OLD FRIEND OF MINE, IS FAR TOO AWARE OF THE DEVELOPMENTS AT THIS CONFERENCE AND THE REALISTIC POSSIBILITIES TO MAKE THE SUGGESTION WHICH THE DRAFT UNDERTAKES TO ANSWER. I TELEPHONED FREYMOND TODAY TO INQUIRE ABOUT THE MEANING OF HIS SUGGESTION, AND HE MADE IT CLEAR THAT HE IS ASKING WHETHER WE CAN HELP PRODUCE A CHANGE IN ARTICLE 1 OF PROTOCOL TWO, REPEAT TWO, THE ARTICLE THAT EXCLUDES FROM COVERAGE INTERNAL DISTURBANCES AND TENSIONS.

2. FREYMOND KNOWS THAT USDEL LED THE UNSUCCESSFUL FIGHT IN 1975 FOR AN ARTICLE THAT WOULD HAVE BROUGHT
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PAGE 02 GENEVA 03379 041941Z

PROTOCOL TWO INTO FORCE AT MUCH LOWER LEVELS OF VIOLENCE. I THINK THE THRUST OF HIS QUESTION ON THIS POINT IS WHETHER THE CARTER ADMINISTRATION, WITH LEADERSHIP FROM THE WHITE HOUSE, MIGHT BE ABLE TO PRODUCE IN THE FINAL PLENARY SESSIONS OF THIS CONFERENCE THE VICTORY ON THIS ISSUE THAT THE DELEGATION COULD NOT ACHIEVE ON ITS OWN IN 1975.

3. ALTHOUGH I BELIEVE THE ANSWER TO THIS QUESTION IS THAT IT IS PROBABLY IMPOSSIBLE TO PRODUCE THIS RESULT AT THIS LATE STAGE, I BELIEVE WE SHOULD NOT BE SO NEGATIVE AS THE DRAFT RESPONSE REFTEL. FOR THE RELEVANT PARTS OF OUR PROPOSED RESPONSE, I SUGGEST SOMETHING ALONG THE FOLLOWING LINES. BEGIN QUOTE:

THE SUGGESTION BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS FOR A SECOND PROTOCOL TO THE GENEVA CONVENTIONS OF 1949 OFFERED THE PROSPECT OF IMPROVING RESPECT FOR HUMAN RIGHTS DURING CIVIL WARS. THE UNITED STATES HOPED TO IMPROVE UPON COMMON ARTICLE 3 TO THE CONVENTIONS, BOTH IN SUBSTANTIVE PROTECTION AND, PERHAPS MORE IMPORTANTLY, IN LOWERING THE LEVEL OF VIOLENCE REQUIRED FOR APPLICATION OF THE LAW. DESPITE OUR BEST EFFORTS, THE DRAFT PROTOCOL NOW PENDING BEFORE THE CONFERENCE LARGELY SUCCEEDS IN IMPROVING SUBSTANTIVE PROTECTION, BUT FAILS TO LOWER -- AND IN FACT PROBABLY RAISES--THE THRESHOLD FOR THE APPLICATION OF THE LAW. I UNDERSTAND AND SHARE YOUR CONCERN THAT THIS RESULT SHOULD NOT BE PERMITTED TO IMPAIR THE ABILITY OF THE ICRC TO CARRY OUT ITS MOST IMPORTANT HUMANITARIAN WORK FOR THE BENEFIT OF POLITICAL PRISONERS AND THE OTHER VICTIMS OF CIVIL WARS.

YOU MAY BE ASSURED THAT THE UNITED STATES DELEGATION WILL BE ALERT TO ANY OPPORTUNITY TO IMPROVE ARTICLE 1 OF PROTOCOL TWO AND LOWER THE REQUIRED LIMITED OFFICIAL USE

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PAGE 03 GENEVA 03379 041941Z

THRESHOLD OF VIOLENCE. I UNDERSTAND THAT AMBASSADOR ALDRICH HAS ALREADY SPOKEN TO YOU ABOUT THIS, AND I ASSURE YOU THAT BOTH HE AND I WELCOME YOUR CONTINUED ADVICE AND ENCOURAGEMENT. THE DIFFICULT FACTS ARE OBVIOUS. THE GREAT MAJORITY OF DEVELOPING COUNTRIES LOOK WITH DEEP SUSPICION ON PROTOCOL TWO AND SEE IN ITS PROTECTIONS ENCOURAGEMENT TO REBELLION AND RESTRICTIONS UPON GOVERNMENTS IN SUPPRESSING REBELLIONS. IN THIS THEY MAY BE OVER-REACTING, BUT THERE IS SOME BASIS FOR THEIR CONCERNS, PARTICULARLY IN THE PROVISIONS DEALING WITH ACTIONS BY COMBATANTS IN ARTICLES 20 THROUGH 29. WITH THESE PROVISIONS IN THE TEXT, IT BECOMES EVEN MORE DIFFICULT NOW THAN IN 1975 TO LOWER THE REQUIRED THRESHOLD TO ENCOMPASS CIVIL DISTURBANCES THAT FALL SHORT OF OPEN CIVIL WAR.

NEVERTHELESS, YOU MAY BE ASSURED THAT THE UNITED STATES WILL DO ALL THAT IS POSSIBLE TO IMPROVE THIS

PROTOCOL. WE SHALL ALSO DO OUR BEST TO ENSURE THAT THE RIGHT OF THE ICTC TO OFFER ITS SERVICES PURSUANT TO COMMON ARTICLE 3 OF THE 1949 CONVENTIONS IS IN NO WAY PREJUDICED BY THE ACCEPTANCE OR NONACCEPTANCE BY STATES OF THIS NEW PROTOCOL. END TEXT.

4. FYI. OUR UNHAPPY EXPERIENCE WITH PROTOCOL TWO RAISES SERIOUS DOUBTS WHETHER THE GENEVA CONVENTIONS AND THE LAWS OF WAR OFFER THE BEST ROUTE TO THE IMPROVEMENT OF RESPECT FOR HUMAN RIGHTS DURING CIVIL WARS. MY JUDGMENT IS THAT PROTOCOL TWO WOULD HAVE HAD A MUCH BETTER CHANCE IF IT HAD BEEN A PURE HUMAN RIGHTS CONVENTION, NOT LINKED TO THE LAW THAT GOVERNS THE ACTIONS OF HOSTILE STATES AND ARMIES IN TIME OF WAR. THE ICRC, BECAUSE OF ITS HISTORIC TIES TO THE GENEVA CONVENTIONS, HAS NATURALLY BEEN RELUCTANT TO REACH THAT CONCLUSION. LIMITED OFFICIAL USE

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PAGE 04 GENEVA 03379 041941Z

PROTOCOL TWO FACES A DIM FUTURE, IF, INDEED THE DEVELOPING COUNTRIES DO NOT USE THEIR VOTES TO HAVE THE CONFERENCE REJECT IT COMPLETELY. SORENSON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXT, POLICIES, HUMAN RIGHTS, DIPLOMATIC COMMUNICATIONS, LAW OF WAR, MEETING PROCEEDINGS
Control Number: n/a
Copy: SINGLE
Sent Date: 04-May-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977GENEVA03379
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770156-1061
Format: TEL
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770596/aaaadfga.tel
Line Count: 142
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: ca85169b-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 STATE 100055
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 09-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2647635
Secure: OPEN
Status: NATIVE
Subject: RESPONSE TO FREYMOND LETTER AS IT RELATES TO THE CONFERENCE ON INTERNATIONAL HUMANITARIAN LAW.
TAGS: PFOR, PARM, US, SZ, ICRC
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/ca85169b-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009